



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: September 21, 2006

Contact Person:

Number: **200650026**

Identification Number:

Release Date: 12/15/2006

Telephone Number:

U.I.L. # 4945.04-04

Employer Identification Number:

Legend:

M =

N =

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Dear :

This letter is in reference to the letter of _____ the authorized representative of M, as supplemented by M's letter of _____, in which M requested advance approval of its grant procedures under section 4945(g)(1) of the Internal Revenue Code. M also requested a ruling that scholarship grants awarded in compliance with the approved procedures will not constitute taxable expenditures within the meaning of section 4945(d)(3). M is planning to institute a scholarship program for high school students to attend privat _____. This ruling modifies and supersedes PLR 200540017, our letter to M dated _____.

M is an organization recognized as exempt from federal income tax as a charitable organization under section 501(c)(3) of the Code. M is determined to be a private foundation within the meaning of section 509(a).

The name of M's scholarship plan is N. Generally, scholarships will be awarded for the recipient's initial academic year and may continue for a maximum of four years contingent upon maintenance of a minimum grade point average, status as a full-time student, and annual receipt of an official transcript and progress report shortly after the end of the academic year. M's scholarships will pay for tuition, books, and fees. The Administrators of high schools located in O County and all contiguous counties will nominate candidates for M's scholarships by submitting a Nomination Form. M's Board of Directors will initially be M's selection committee. However, M's Board of Directors may in the future delegate this responsibility to other persons. Each member of M's Board of Directors must disclose in writing any relationship with any candidate for a scholarship and to refrain from participation in the award process in a

circumstance where he or she would derive, directly or indirectly, a private benefit if any candidate or candidates are selected over others. M's scholarship candidates must be enrolled, or about to enroll, as full time students in a private high school. Nominees are selected without regard to the race, color, age, religion, or sex of the nominee. M's scholarship candidates must meet one or more of the following criteria:

1. The candidate shows sufficient academic ability to enable him or her to complete courses of study necessary to graduate from his or her selected private high school.
2. The candidate has the necessary character and motivation to obtain an education.
3. The candidate exhibits need for financial assistance.

M's scholarships will be awarded to recipients for study toward a degree at an educational institution described in section 170(b)(1)(A)(ii) of the Code. Recipients of the scholarships must be enrolled, or about to be enrolled, as full-time students at such educational institutions. Scholarship recipients must use the funds for tuition, books, and fees at the recipient's respective school. Each scholarship will be paid by M directly to the educational institution for the use of the scholarship recipient.

No scholarships may be awarded to any member of the family of M's Board of Directors, M's creators, or any other disqualified person as defined in section 4946(a) of the Code with respect to M, or for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B). M will retain complete records in connection with all scholarships awarded for at least five years following the completion or termination of each scholarship.

Section 170(b)(1)(A)(ii) of the Code describes an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Section 170(c)(2)(B) of the Code, in part, defines a charitable contribution as meaning a contribution or gift to or for the use of a corporation organized and operated exclusively for religious, charitable, or educational purposes.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific, or educational purposes provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. "Charitable" as used in its generally accepted legal sense includes advancement of education.

Sections 4945(a) and (b) of the Code impose certain excise taxes on expenditures defined as taxable expenditures by section 4945(d).

Section 4945(d)(3) of the Code provides that the term “taxable expenditure” means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(1) of the Code provides that section 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 4946(a)(1) of the Code provides, in part, that the term “disqualified person,” with respect to a private foundation, includes a person who is a substantial contributor of the foundation, a foundation manager, and a member of the family of either such person including a spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Section 53.4945-4(c)(1) of the Foundation and Similar Excise Taxes Regulations provides that to secure approval for a grant-making procedure, a private foundation must demonstrate to the satisfaction of the Commissioner that:

- (a) The grant procedure includes an objective and nondiscriminatory selection process;
- (b) The procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (c) The foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance. Reports are not required if the foundation pays the scholarship grants to an educational institution. See sections 53.4945-4(c)(5) and 53.4945-4(c)(7).

Section 53.4945-4(c)(4) of the regulations provides that a foundation is under a duty to investigate and attempt to recover any misuse of grants.

Since M is aiding students attend private high schools, its scholarship program would be a charitable activity of advancing education under section 501(c)(3) of the Code.

M's procedures for awarding scholarships comply with the requirements contained in section 4945(g)(1) of the Code because:

- (a) M's scholarship procedures include an objective and nondiscriminatory selection process. M's applicants are rated by objective and nondiscriminatory criteria by

persons experienced in rating of students on their accomplishments and potential.

- (b) M's recipients must be enrolled in a degree program to receive M's scholarship grants. M's recipients must be enrolled in an educational institution described in section 170(b)(1)(A)(ii) of the Code. Thus, M's procedures are designed to result in the performance of the activities that M intends to finance.
- (c) M will satisfy the report requirement by paying its scholarship grants directly to the respective private high schools.

M has submitted information showing that it will investigate and seek recovery of any misuse of its grants.

Based on the information submitted, and assuming M's scholarship program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of its scholarship grants, we rule that M's grants comply with the requirements of section 4945(g)(1) of the Code. Expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3), and as such are eligible for the exclusion from income provided for in section 117(a) to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2).

This ruling is based on the facts as they were presented and is conditioned on the understanding that there will be no material changes in the facts upon which it is based. It is further conditioned on the understanding that no grants will be awarded to any member of the family of M's creators, Board of Directors, or any other disqualified person as defined in section 4946(a) of the Code with respect to M, or for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B).

The approval of M's grant-making procedures is a one time approval of its system of standards and procedures for selecting recipients of grants that meet the requirements of section 4945(g)(1) of the Code. Thus, approval will apply to succeeding grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in M's request.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

Because it could help resolve questions concerning M's federal income tax status, this ruling should be kept in M's permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosure
Nortice 437